

bandwidth aggregation points. Third party fiber networks do not typically interconnect end-user premises to CLEC facilities due to the low bandwidth aggregation (and thus low revenue opportunity) that generally does not justify building laterals. Thus, collocation is the norm for competitive networks and impacts the economics of self-deployment. As demonstrated above, collocation, alone, can be the factor that deters CLECs from investing in certain markets.

23. Alpheus' collocation analysis hinges on two factors: first the length of time it takes to collocate, second, the investment necessary. The intervals for SBC to make floor space available to allow physical collocation range from 2-5 months. In the case where a CLEC is replacing a DS3 dedicated transport route with dark fiber dedicated transport, collocation would be required in order to aggregate traffic from UNE loops and carry them back to the CLEC POP. It is interesting that in Houston wire centers *** BEGIN

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³ RBOC Fact Report at III-28.

interoffice conduit system, another 4-6 months has elapsed.⁴ In order to deploy fiber into an SBC central office, the CLEC must physically connect its manhole to the SBC zero manhole. This will allow the CLEC to deploy fiber into the SBC manhole. Then the CLEC must place an application to have SBC physically pull the fiber from the SBC manhole outside of the central office, a very small distance, into the CLEC collocation space. SBC takes up to 60 days to pull this fiber. Only then, after approximately a seven-month interval, can the CLEC build its network. It has been Alpheus' experience that even with no outside plant construction required, collocation from design, to application, to test and turn up collocated equipment takes over a year.

24. The most imposing hurdle for collocation, however, is the cost. And in most instances the cost of collocation is not the payment to the ILEC. When Alpheus collocated in the Clay central office in Houston, it paid SBC approximately *** BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL*** The total cost of the build, with equipment, labor, cabling, test and turn up, was well over *** BEGIN CONFIDENTIAL [REDACTED] END CONFIDENTIAL***. These costs include purchasing and installing multiplexing and DWDM equipment, power distribution, telemetry, cabling and interfaces into SBC (APOT and CFA).

25. Since the cost of collocation is high, the addressable market must be sufficient to warrant deployment. It has been Alpheus' experience that the expense of collocation alone creates a barrier to providing service in some wire centers. To incur this cost,

⁴ Alpheus Dec. ¶ 26.

together with the cost of self-deploying fiber, means that the CLEC expects that a route will produce significant revenue for an extended period.

26. Alpheus must make other substantial investments in order to begin using our own network. In addition to investing in collocation arrangements, carriers, including wholesale carriers, build a "hub" or a central location where all of the carrier's transport networks come together.⁵ For instance, Alpheus invested over *** **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL** *** to build its hub site in Houston. Separate hubs are typically located in each MSA. Further, carriers typically require a network operations center ("NOC") that monitors the network twenty four hours a day, seven days a week. There is also significant investment necessary in order to construct the NOC, maintain software and provide 24x7 network monitoring. It is apparent that for an efficient new CLEC to build its own transport, the cost of the network operations center, the hub and collocation alone create significant impediments to competing with the ILEC, even before considering how to construct its fiber in the ground, obtaining requisite permits, and managing street closures, moratoriums, and blocked SBC conduit. Such construction also takes significant time, usually more than eighteen months, which is another impediment in competing against the incumbent that has a network paid for by captive ratepayers available for its use.

27. There are other barriers to self-deployment associated with collocating in ILEC central offices. First, ILECs typically increase the application interval depending on the number of applications. For instance, if an efficient CLEC requested 1 to 5 collocations,

the initial interval for SBC to advise the collocator if space is available is 10 business days or two weeks. If the CLEC submits 6 to 20 applications, the SBC interval for a response jumps to 25 business days just for SBC to tell the CLEC if there is space available. These intervals are not part of the interval in which SBC prepares the space for CLEC use.

28. Further, the intervals themselves do not paint an accurate picture of the time needed to collocate, because the ILEC typically plays an unfortunate game of "hide the collocation space." When a CLEC files its request for space, it must state whether it seeks cageless or caged space, the exact equipment configuration and the exact number of racks and square footage that it needs. If the CLEC requests cageless collocation and there is not enough floor space in the cageless area, the ILEC does not tell the CLEC what space is available or if there would be space if the CLEC chose caged collocation. Instead, the ILEC simply replies that the space requested is not available. The CLEC must then either change its network design to reduce the floor space, and guess at how much space is actually available or request caged collocation. This process of "guess what kind of space and how much space is available" can go on for months. Alpheus has experienced this kind of gamesmanship on multiple occasions, because every time Alpheus submits a request for more information to SBC, such as the type of collocation that is available, or where space might be available, SBC starts the interval all over again. This cat and mouse game is typical of the customer treatment Alpheus receives from SBC.

⁵ This is sometimes called a POP.

ALTERNATIVE IRU FIBER

29. Alpheus prefers not to rent from an unwilling landlord unless no other alternatives exist. Alpheus has, for the last four years, been in the process of deploying its own transport fiber. Importantly, as part of its constant effort to self-deploy its transport network, Alpheus recently issued a Request for Proposal (RFP) to all potential fiber owners in the Texas market, seeking dark fiber for IRU purposes. Most telling about the availability of third party transport dark fiber under an IRU arrangement are the responses Alpheus received in response to its RFP. Alpheus solicited responses from 15 companies for Dallas/Fort Worth, Houston, San Antonio and Austin. Of these 15 responses, 2 carriers indicated they had some fiber available in Houston and Dallas, and no carriers had fiber available in San Antonio and Austin. Although SBC self-servingly claims that there is extensive alternative dark fiber available, Alpheus' actual market experience shows the opposite. Alpheus, of course, has also approached SBC to purchase dark fiber under IRU commercial terms, and SBC refused to sell any of its substantial spare and unused fiber under *any price or any terms*. Indeed, Alpheus cannot understand how SBC can turn away significant revenue for assets it does not use, revenue that would go towards helping its ratepayers save money.

IMPEDIMENTS TO SELF-DEPLOYMENT

30. It is interesting that the impediments to self-deployment of fiber loops are most evident in the core business districts. Without question, multi-year street moratoriums, congested rights-of-way, old unusable duct, underground malls and shopping centers encroaching in the ROW, building tunnels, rail transport facilities, building access issues

and strict permitting requirements all render self-deployment difficult if not impossible. Sometimes the only saving grace is SBC's available duct. Without access to the existing duct runs underneath the city in the core business districts, it would be virtually impossible for CLECs to self-provision loops.

31. SBC claims to support facilities-based competition yet puts roadblocks at every turn to make sure that competitive deployment does not happen. For example, as we stated in our initial declaration, Alpheus is in the process of designing transport routes using recently purchased IRU fiber that needs to be connected to the SBC duct run eventually to eventually be pulled into Alpheus' existing collocation arrangements. Alpheus is required to fly to each city to initially review seven-year old paper copies of SBC duct and cable records. Recently, one of the clerks at SBC's Dallas office told Alpheus' engineer that SBC has its main Opti-CAD database that shows the duct and cable information for the entire state on line in Houston. It would be far more efficient for Alpheus if its engineers located in Houston could review the digitized maps at the Houston SBC district office. SBC of course refuses. SBC has built in first mover advantages here. Unless there is installation ready duct available for Alpheus' use, building in the central or core business districts present clear impediments to market entry.

32. Outside of the central business districts in each market, the restrictions on construction lessen but so does availability of the existing SBC duct. Most importantly, the distance between the wire centers increases as the geographic area served increases. Length of the facility alone adds significantly to the cost of deployment. It is within

these areas where building fiber facilities becomes the most costly since the already significant costs of digging and trenching, and obtaining rights-of-way, are multiplied because of the increased distance on which we must conduct such activities. The problem is that the addressable market in these areas does not justify the cost of deployment because there are typically few if any concentrations of customers such as carrier POPs or commercial office buildings where deployment of fiber is typically warranted.

33. The area the furthest distance from the CBD is the least densely populated, with the smallest addressable market. Generally there are telephone poles in these areas and a CLEC could place fiber on the poles, although this is not an industry practice due to the potential for outages and such risk is typically unacceptable to customers that require high bandwidth services for their businesses. However, in this area, Alpheus can direct bury the cable into the ground (typically in the dirt) without tearing up the streets. The problem is the addressable market is so small that, in most cases, the cost to collocate, much less the cost to self-deploy fiber, is not justifiable given the limited revenue opportunities. The illustration below demonstrates:

Type of Area	SBC Duct	Trenching in Street	Direct Buried or Aerial	Addressable Market
Central Business District	Most ducts available but older and often unusable.	Due to high construction costs, moratoriums, and restrictions make this very difficult, if not impossible to accomplish	There are generally no poles in the core business districts. Direct Buried is not possible.	Most dense

Type of Area	SBC Duct	Trenching in Street	Direct Buried or Aerial	Addressable Market
10 to 20 miles Outside CBD	Very little duct available.	Cost to trench generally lessens, rights-of-way less congested.	Still older parts of the city where direct buried would not be permissible. Spotted pole runs.	Medium density market. Mix of residential and small to medium business.
Outside City	Duct typically not available because fiber is direct buried fiber	Not necessary to trench in street as large expanses of rights-of-way.	Can frequently direct bury or place aerially.	Low population density.

34. As we noted in our original declaration, replacing UNE dark fiber with alternatives is extremely time intensive. If Alpheus must trench to replace UNE dark fiber, particularly on certain routes with the moratoria and other challenges discussed previously, the physical construction of duplicative fiber facilities could take up to forty-eight (48) months. However, with access to existing roped and rodded SBC duct between the central offices, Alpheus could reduce its transition time to less than twelve months.

TRANSPORT AND LOOP DEPLOYMENT: TWO DIFFERENT ECONOMIC MODELS

35. Importantly, even when CLECs may have built, or arguably could build, their own facilities between some central offices, that does not mean that any CLEC could economically build its own loops within those wire centers. The economics of the two

segments of the network are completely independent. Indeed, one can easily see how, over time, enough traffic finally aggregated in a central office could make self-deployment of transport possible. The aggregation throughout an entire wire center needs to rise to offset the risk of the fixed cost of self-deploying the transport. Those economics can be very different if you have to trench a downtown street to sell a single DS1 or DS3 on a 1 or 3 year contract. The two calculations are simply not related.

36. SBC and the RBOCs claim that all carriers must overcome the barrier of building access for deploying loops.⁶ This is simply not true. Rather, SBC and other ILECs are still perceived as monopoly utilities and retain the advantages of their former state sanctioned monopoly. Because SBC is seen as a utility along with water, electric and gas, when designing a new building, the building owner asks SBC to deploy service to the building. When tenants first lease space in the building, SBC is regularly the only telecommunications provider serving the building. CLEC typically gain entry only when a tenant requires the landlord to allow its carrier of choice into the building.

37. In Mr. Galvan's previous job at SBC, he witnessed general contractors regularly calling SBC in advance of starting construction on new building, warehouse or apartment complex construction projects. SBC and the architect or general contractor would agree on the number of conduits needed from the building and to which SBC manhole the conduits would be connected. Even today, rarely, if ever, are building access fees required for SBC's dual fiber entrance and fiber riser system in the building. In addition, SBC is typically allowed predetermined space in the building at no cost. This

arrangement is happening today as it has for the last 100 years, because SBC is still perceived as a utility. SBC's claims that all carriers face the same obstacles to access new buildings are absolutely incorrect. Even in new buildings, SBC has first mover advantages.

38. To enhance its first mover advantages outlined above, SBC utilizes its Business Smart Moves Program. This program provides building owners with an incentive to maximize their tenant's use of SBC's services and to minimize competition for those services in the building. Building owners generally make it difficult for CLECs to enter the building by charging exorbitant rates, thus preserving their commissions from SBC, who they apparently consider a more stable company and a continuous revenue source to some of the largest building portfolios in the nation. In Texas, Time-Warner Telecom went to court because while it was charged significant fees for building access, the ILEC was not. The court held that under the Texas building access statute, the building owner was not discriminating by charging Time Warner Telecom and not SBC because SBC, as the carrier of last resort and former legal monopoly received free access. Again, SBC is treated today as a utility, not only by the general contractors who construct the buildings but by the courts, as well.

39. But the cost of tearing up the streets is a small part of larger issues CLECs must overcome. No matter the method of deployment, time to market is critical. As we explained in our initial declaration, it takes months and sometimes years just to obtain the permits necessary to deploy fiber to a building. Depending on the length of the lateral,

⁶ SBC comments at p. 74.

Alpheus must deal with 2-3 different governmental entities in every major market. Each has different rules and regulations that can delay deployment indefinitely.

40. It has been Alpheus' experience that customers typically resist waiting until Alpheus can build and demand service immediately. In fact, many of our customers do not even want to wait the length of time it takes to activate UNE dark fiber, which from facility check until test and turn up can take several months. The only time it has been economically feasible to deploy our own fiber was to carrier POPs where the aggregation of traffic warranted the build. Even for large carrier POPs where Alpheus believes it can self-provision, Alpheus is often forced initially to use UNE dark fiber to provision the customer immediately to avoid time to market issues while it was self-deploying..

41. Alpheus' deployment requires more time, more capital and much more work than any SBC build would require to reach a new customer.⁷ SBC construction standards typically require that SBC place a minimum of twenty-four fiber count fiber cable between a manhole outside of the building, through the conduit that the building owner provided, terminating the fiber cable in a telephone equipment room access to which the building owner provides to SBC free of charge. In most cases, SBC does not lift a shovel at all. As we discussed above, SBC has, through the years, already placed fiber cable in all of the high-rise buildings and places fiber to new high rise buildings, using its

⁷ Of course SBC would never build from scratch because SBC has its ubiquitous ratepayer funded conduit system available for use. While SBC can use its maintenance duct, which is always roped and rodded and ready for use, CLECs must undertake the lengthy and cumbersome process to review, locate and obtain ILEC duct because CLECs are not afforded access to. In other words, SBC can almost always beat CLECs to the customer even where both companies are starting from scratch.

advantage as a "utility". With SBC, the contractor of the new building would bear the cost of connecting its building to SBC's vast duct network.

42. Alpheus, on the other hand, would have to build fiber from its nearest fiber route, which could be thousands of feet away, build to the SBC duct run, where interconnection of the SBC duct with Alpheus duct requires, every time, expensive trenching of the streets. It is notable that in all cases the interconnection of a CLEC duct run to the ILEC duct run is always at the CLEC's expense. This process requires permits to trench, potential of rerouting over thousands of feet to avoid street moratoria and working at night with its increased risk and higher labor costs. Although the CLECs are required to work at night, SBC with its utility status is allowed to work anytime it needs. After an exhaustive review of SBC available duct, Alpheus would pull its fiber from the interconnected duct manhole to the SBC manhole outside of the building.

43. Another first mover advantage that SBC retains is the ability to use its maintenance duct. There are many times when ILECs have decommissioned copper cable left in the duct that needs to be removed before duct can be used for new cable placement. When SBC decommissions old cable (usually copper), it does not typically remove the old cable which limits the CLEC's options to find an available duct. The expense of removing the old copper is left for the CLEC to bear. This can be an expensive and time-consuming process, if the CLEC has no other option but remove the abandoned cable. While this requirement lengthens the CLEC's time to market, it would not lengthen SBC's time to market. SBC always has a maintenance or emergency duct which is just a duct intentionally left vacant to be used as a conduit to replace damaged

cable. SBC utilizes the maintenance duct to deploy new facilities in a timely manner and after deployment using the maintenance duct, clears the old decommissioned cable later to at its leisure to create a new maintenance duct. SBC will not allow the CLECs to deploy its fiber in the vacant maintenance duct, as SBC does.

44. The fact that there may be fiber facilities “near” high-rise buildings that were never connected into the building itself is a telltale sign that building access issues exist. In the “gold rush” of fiber deployment where capital was no issue and the “build it and they will come” mentality prevailed, there was every reason to deploy fiber into high-rise office buildings. That competitors did not extend fiber into a commercial building is evidence of an obstacle — building access restrictions that the carrier could not overcome. Some CLECs are abandoning their facilities completely if they cannot afford to operate in the building. Some CLECS are also abandoning their fiber/conduit assets in metropolitan areas where it is not profitable to operate because of the building access cost and the large franchise fees they pay to the city governments.

45. Alpheus would prefer to own its own fiber loops. SBC makes it difficult to order UNE dark fiber to any location but particularly to high-rise buildings. For example, SBC refuses to process a facility check without the suite number of our customer as well as a telephone number of our customer. SBC has repeatedly called our customer to discover what kind of services they are obtaining from Alpheus. If there is no fiber available to the exact suite, SBC responds that no fiber is available, even when fiber may be available in the common equipment room on that floor or in the basement. Alpheus has two choices at this point. One is to fly personnel to the city in which the building is located,

review SBC's plant location records, make a building site visit to see what floor the SBC fiber is terminated, and send in a new facility check asking for fiber to the specific location. The other option is to play SBC's "three card monte" game and try to guess where the fiber is terminated and request fiber to that location until the fiber is found.

SBC'S SPECIAL ACCESS RATES HAVE INCREASED EVEN WHERE SBC HAS OBTAINED PRICING FLEXIBILITY

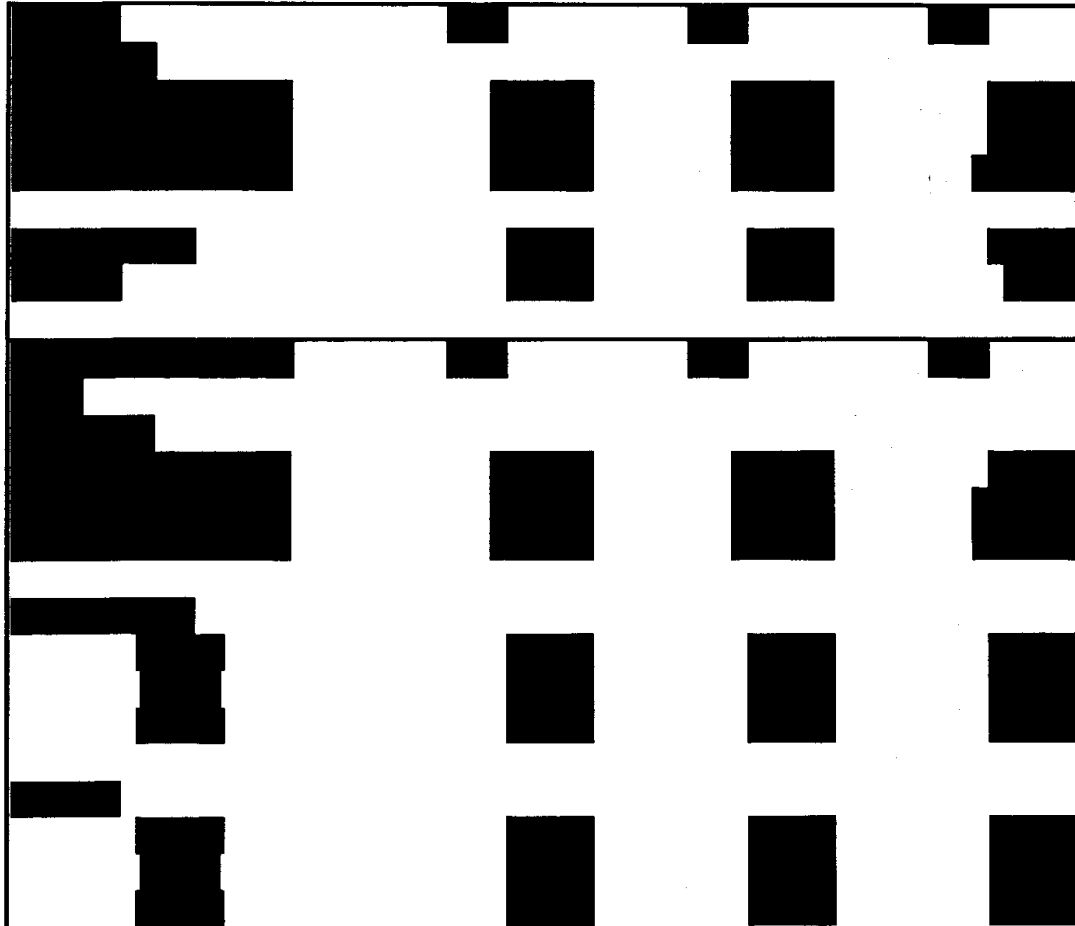
46. It is also telling that SBC claims that special access rates have decreased.⁸ SBC is not telling the truth. Alpheus uses some special access circuits, but never by choice. The reasons are simple. SBC often refuses to provision UNE loops to certain locations or "hides" where the facilities are terminated. In order to avoid losing the sale (if the customer has the potential to become a large customer), Alpheus may use special access as a bridge until it can obtain a UNE loop or build its own facility. The problem with special access rates is that it is not sustainable economically for Alpheus to pay the same rate that is available to our customers.. We cannot purchase a retail product from SBC and provide a wholesale service that competes against that retail product. Thus, from this use of special access, we know that SBC's tariffed rates are actually increasing.

47. By way of example, currently Alpheus has an HCTPP plan from SBC for DS1 facilities. Since the five-year term price is half that of the one-year term, Alpheus has no choice but to lock itself into the longest and cheapest term. However, SBC is replacing the HCTPP plan with the TPP plan. The rate for the TPP one-year term represents a

⁸ Cite SBC Comments at 67.

decrease from the old one-year HCTPP plan. But the rates for the five year term between the two plans increases almost a full 25%!

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48. Note that the per-mile charge has significantly increased under the five-year plan. The per-mile rate is calculated by zone, and it is Alpheus' experience that Zone one, although the least costly rate, is only available in approximately ten percent of SBC's wire centers. So although SBC rarely sells DS1's under a one-year term, SBC can still claim that special access prices have gone down. What SBC fails to disclose is that for

the lowest and most used price point, the five-year term pricing plan, special access has increased an average of 25%! Of course, the fundamental question here is how one provider in a so-called competitive market can unilaterally increase prices 25%, without major repercussions. The only reason SBC can increase its prices to such levels is because of their monopoly status and the fact that there is no competition — intermodal or otherwise. (Do we want to cite that these figures are from SBC's FCC 73 Tariff Section 8?)

UNBUNDLING DOES NOT CONTROL INVESTMENT DECISIONS

49. SBC claims that most of its fiber was deployed after the '96 Act. First, and importantly, such a reality would mean that the forced unbundling which was crucial to competition did not and does not cause the ILEC to cease deployment. But as a realistic matter, any facilities deployed after 1996 were almost, without exception, loops. SBC started to deploy interoffice transport dark fiber in the mid 1980's and completed that deployment before 1996. Mr. Galvan knows this because, during this time, 1) Mr. Galvan was working as an engineer for SBC, responsible for outside plant fiber deployment during that time, and 2) since coming to Alpheus he has reviewed the plant location records for most of the wire centers in Houston and Dallas, which show the date of the fiber placement. These dates are consistent with deployment from the mid 1980's to the mid-1990's. New fiber deployed since 1996 was generally deployed to the remote terminals for increasing the market reach of DSL service under SBC's "Project Pronto, or for the T-1 roll program where SBC is placing fiber cable into buildings with a high

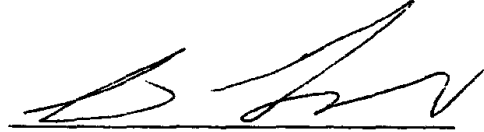
concentration of T-1's on copper cables and rolling active circuits to new fiber cables, and to Carrier POP locations.

DIFFERENT CLECS HAVE DIFFERENT COST TO BUILD ANALYSIS

50. Importantly, Alpheus is a wholesaler — a carrier's carrier. Alpheus is committed to providing vibrant competition at the wholesale level. Without wholesale competition, there can be no retail competition. Alpheus is providing new and better products than SBC on several levels, including managed wavelengths and gigabit Ethernet. These products and services allow retailers to compete directly against SBC and other CLECs. Of course, it is important to keep in mind when determining the proper financial parameters for self-deployment, that not all CLECs are the same. A retail CLEC will undoubtedly make more margin on a DS3 than a wholesaler. Indeed, competitors who deploy retail offerings and enjoy the full breadth of retail profits, such as AT&T, cannot compare with Alpheus' very lean wholesale margin. These retail carriers do not sell raw bandwidth, but rather sell advanced services such as voice, Frame Relay, ATM, IP, VPNs and video conferencing. Alpheus provides the raw bandwidth that allows smaller carriers to purchase the bandwidth to the building and provide the advanced services to compete with the large carriers such as SBC, AT&T and MCI. Importantly, then, the financial considerations in determining self-deployment for a retail CLEC may show a break even point prior to a wholesaling CLEC. Each is important, however, in creating a healthy telecom ecosystem, and each must be allowed to approach the market economics in the proper perspective for their market subset.

51. Declarants sayeth no more.

We declare under penalty of perjury that the foregoing is true and correct.



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Executed on: October 19, 2004
Houston, Texas